

COMMERCIAL AVIATION MANPADS DEFENSE ACT OF 2004

JUNE 23, 2004.—Ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 4056]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 4056) to encourage the establishment of both long-term and short-term programs to address the threat of man-portable air defense systems (MANPADS) to commercial aviation, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Commercial Aviation MANPADS Defense Act of 2004”.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) MANPADS constitute a threat to military and civilian aircraft.
- (2) The threat posed by MANPADS requires the development of both short-term and long-term plans.
- (3) The threat posed by MANPADS requires an international as well as domestic response.
- (4) There should be an international effort to address the issues of MANPADS proliferation and defense.
- (5) The Government is pursuing and should continue to pursue diplomatic efforts to prevent the proliferation of MANPADS.

SEC. 3. INTERNATIONAL COOPERATIVE EFFORTS.

(a) TO LIMIT AVAILABILITY AND TRANSFER OF MANPADS.—The President is encouraged to pursue further strong international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to limit the availability, transfer, and proliferation of MANPADS worldwide.

(b) TO ACHIEVE DESTRUCTION OF MANPADS.—The President should continue to pursue further strong international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to assure the destruction of excess, obsolete, and illicit stocks of MANPADS worldwide.

(c) **REPORTING AND BRIEFING REQUIREMENTS.**—Not later than 180 days after the date of enactment of this Act, the President shall transmit to the appropriate congressional committees a report that contains a detailed description of the status of diplomatic efforts under subsections (a) and (b). Annually thereafter until completion of such diplomatic efforts, the Secretary of State shall brief the appropriate congressional committees on the status of such diplomatic efforts.

SEC. 4. FAA AIRWORTHINESS CERTIFICATION OF MISSILE DEFENSE SYSTEMS FOR COMMERCIAL AIRCRAFT.

(a) **IN GENERAL.**—As soon as practicable, but not later than, the date of completion of Phase II of the Department of Homeland Security's counter-man-portable air defense system (MANPADS) development and demonstration program, the Administrator of the Federal Aviation Administration shall establish a process for conducting airworthiness and safety certification of missile defense systems for commercial aircraft certified as effective and functional by the Department of Homeland Security. The process shall require a certification by the Administrator that such systems can be safely integrated into aircraft systems and ensure airworthiness and aircraft system integrity.

(b) **CERTIFICATION ACCEPTANCE.**—Under the process, the Administrator shall accept the certification of the Department of Homeland Security that a missile defense system is effective and functional to defend commercial aircraft against MANPADS.

(c) **EXPEDITIOUS CERTIFICATION.**—Under the process, the Administrator shall expedite the airworthiness and safety certification of missile defense systems for commercial aircraft certified by the Department of Homeland Security.

(d) **REPORTS.**—Not later than 90 days after the first airworthiness and safety certification for a missile defense system for commercial aircraft is issued by the Administrator, and annually thereafter until December 31, 2008, the Federal Aviation Administration shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that contains a detailed description of each airworthiness and safety certification issued for a missile defense system for commercial aircraft.

SEC. 5. PROGRAMS TO REDUCE MANPADS.

(a) **IN GENERAL.**—The President is encouraged to pursue strong programs to reduce the number of MANPADS worldwide so that fewer MANPADS will be available for trade, proliferation, and sale.

(b) **REPORTING AND BRIEFING REQUIREMENTS.**—Not later than 180 days after the date of enactment of this Act, the President shall transmit to the appropriate congressional committees a report that contains a detailed description of the status of the programs being pursued under subsection (a). Annually thereafter until the programs are no longer needed, the Secretary of State shall brief the appropriate congressional committees on the status of programs.

(c) **FUNDING.**—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 6. MANPADS VULNERABILITY ASSESSMENTS REPORT.

(a) **IN GENERAL.**—Not later than one year after the date of enactment of this Act, the Secretary of Homeland Security shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the Department of Homeland Security's plans to secure airports and the aircraft arriving and departing from airports against MANPADS attacks.

(b) **MATTERS TO BE ADDRESSED.**—The Secretary's report shall address, at a minimum, the following:

(1) The status of the Department's efforts to conduct MANPADS vulnerability assessments at United States airports at which the Department is conducting assessments.

(2) How intelligence is shared between the United States intelligence agencies and Federal, State, and local law enforcement to address the MANPADS threat and potential ways to improve such intelligence sharing.

(3) Contingency plans that the Department has developed in the event that it receives intelligence indicating a high threat of MANPADS attack on aircraft at or near United States airports.

(4) The feasibility and effectiveness of implementing public education and neighborhood watch programs in areas surrounding United States airports in cases in which intelligence reports indicate there is a high risk of MANPADS attacks on aircraft.

(5) Any other issues that the Secretary deems relevant.

(c) **FORMAT.**—The report required by this section may be submitted in a classified format.

SEC. 7. DEFINITIONS.

In this Act, the following definitions apply:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the Committee on Armed Services, the Committee on International Relations, and the Committee on Transportation and Infrastructure of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Commerce, Science, and Transportation of the Senate.

(2) **MANPADS.**—The term “MANPADS” means—

(A) surface-to-air missile systems designed to be man-portable and carried and fired by a single individual; and

(B) any other surface-to-air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.

PURPOSE OF THE LEGISLATION

H.R. 4056 encourages the establishment of both long-term and short-term programs to address the threat of man-portable air defense systems (MANPADS) to commercial aviation.

BACKGROUND AND NEED FOR LEGISLATION

Since the tragedies of September 11th, the threat terrorism presents to commercial aviation has been the focus of considerable attention. The latest threat, although not new to the world, is the risk of shoulder-fired missile attacks or MANPADS. There are likely over 700,000 MANPADS worldwide. Certain portions of those weapons are widely available and obtainable on the black market. Information as to the number of MANPADS in the hands of “non-state” or terrorist groups vary, but at least 27 “non-state” groups have these weapons in Africa, Asia, Europe, the Middle East, and South America. The availability, portability and concealable make-up of MANPADS all add to the appeal of these weapons to terrorist groups.

In response to this growing threat to commercial aviation, Congress has directed the Department of Homeland Security (DHS) to conduct research and development of missile defense systems for commercial aircraft. Pursuant to FY 2003 Wartime Supplemental Appropriations (P.L. 108–11, 4/16/2003), the DHS has initiated an aggressive two-phase Systems Development and Demonstration (SD&D) program for antimissile devices for commercial aircraft. DHS will investigate directed infrared countermeasures (DIRCM) and other technologies to provide protection against man-portable air defense systems (MANPADS). DHS does not intend for this program to develop new technologies, but rather to migrate existing technologies to the commercial airline industry.

Phase I of the SD&D Counter-MANPAD program, which will result in a Preliminary Design Review, will be an intensive six-month effort to design solutions to the potential threat of MANPADS to commercial aircraft. The potential for multiple awards under Phase I exists. Down-selection may occur between Phases I and II.

Phase II of the program will develop, integrate, test, and certify two prototypes for each viable concept. Operational testing will include flight-testing and possibly live-fire aerial cable testing to vali-

date performance assumptions. An FAA certification will also be conducted during this phase. At the end of Phase II, a full report of findings will be published to support a production decision.

The Committee believes that the United States must take a comprehensive approach to the threat MANPADS pose to commercial aviation. This includes long term and short-term solutions, as well as domestic and international efforts. H.R. 4056 is intended to make clear that while the DHS is conducting the SD&D Counter-MANPAD program for commercial aircraft, interim solutions to the threat posed by MANPADS should be taken.

Therefore, H.R. 4056 sets forth various actions to be taken to address the threat while the SD&D Counter-MANPAD program is ongoing. Specifically, the bill encourages the President to pursue strong international diplomatic and cooperative efforts, including multilateral and bilateral treaties, to limit the availability, transfer and proliferation of MANPADS and to seek the destruction of excess, obsolete and illicit MANPADS. H.R. 4056 also requires the FAA, when appropriate, to expedite their airworthiness certification of the missile defense systems for commercial aircraft and to avoid duplicating the efforts taken by DHS during the SD&D Counter-MANPAD program. The bill also contains a provision encouraging the President to continue programs to reduce the number of MANPADS worldwide. Finally, the legislation directs the DHS to report to Congress, within one year, on the vulnerability assessment reports they are conducting at U.S. airports and any ground-based defense policies or procedures recommended through that process.

SUMMARY OF THE LEGISLATION

Section 1.—Short title

This Act may be cited as the “Commercial Aviation MANPADS Defense Act of 2004”.

Section 2.—Findings

This section sets forth congressional findings describing the threat MANPADS pose to commercial and military aircraft and the need for both an international and domestic response. It further finds that there should be an international effort to address the issues of MANPADS proliferation and defense.

Section 3.—International cooperative efforts

This section encourages the President to pursue further strong international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to limit the availability, transfer, and proliferation of MANPADS worldwide, and then to assure the destruction of excess, obsolete, and illicit stocks of MANPADS worldwide.

This section also directs the President to transmit to the appropriate congressional committees a report that contains a detailed description of the status of diplomatic efforts under subsections (a) and (b) and an annual briefing by the Secretary of State until completion of such diplomatic efforts.

Section 4.—FAA airworthiness certification of missile defense systems for commercial aircraft

This section directs the Federal Aviation Administration (FAA) to establish a process for conducting airworthiness and safety certification of missile defense systems for commercial aircraft certified as effective and functional by the DHS. This must be completed as soon as practicable but not later than the date of completion of Phase II of the counter MANPADS development and demonstration program. The process shall require a certification by the FAA Administrator that such systems can be safely integrated into aircraft systems and ensure airworthiness and aircraft system integrity.

This section also mandates that under the airworthiness and safety certification process, the Administrator must accept the certification of the DHS that a missile defense system is effective and functional to defend commercial aircraft against MANPADS. Section 4 requires the Administrator to expedite the airworthiness and safety certification of missile defense systems for commercial aircraft certified by the DHS.

Finally, not later than 90 days after the first airworthiness and safety certification for a missile defense system for commercial aircraft is issued by the Administrator, and annually thereafter until December 31, 2008, the FAA is directed to transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that contains a detailed description of each airworthiness and safety certification issued for a missile defense system for commercial aircraft.

Section 5.—Programs to reduce MANPADS

This Section encourages the President to pursue strong programs to reduce the number of MANPADS worldwide so that fewer MANPADS will be available for trade, proliferation, and sale. It also requires, not later than 180 days after the date of enactment, the President to transmit to the appropriate congressional committees a report that contains a detailed description of the status of the programs being pursued. It requires an annual briefing by the Secretary of State to the appropriate congressional committees on the status of programs until the programs are no longer needed. Finally, this section authorizes to be appropriated such sums as may be necessary to carry out this section.

Section 6.—MANPADS vulnerability assessments report

This section requires the Secretary of Homeland Security to transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the Department of Homeland Security's plans to secure airports and the aircraft arriving and departing from airports against MANPADS attacks. The Report is due not later than one year after the date of enactment.

The Report shall at a minimum, address the following: (1) the status of the Department's efforts to conduct MANPADS vulnerability assessments at United States airports; (2) how intelligence is shared between the United States intelligence agencies and Fed-

eral, State, and local law enforcement to address the MANPADS threat and potential ways to improve such intelligence sharing; (3) contingency plans that the Department has developed in the event that it receives intelligence indicating a high threat of MANPADS attack on aircraft at or near United States airports; (4) the feasibility and effectiveness of implementing public education and neighborhood watch programs in areas surrounding United States airports in cases in which intelligence reports indicate there is a high risk of MANPADS attacks on aircraft; and (5) any other issues that the Secretary deems relevant.

Section 7.—Definitions

This section provides definitions of terms used in the Act.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

H.R. 4056 was introduced by Aviation Subcommittee Chairman John Mica, Aviation Subcommittee Ranking Member Peter DeFazio, and Congressman Steve Israel on March 30, 2004. It was referred to the Committee on Transportation and Infrastructure and to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the Committee concerned. The Aviation Subcommittee held a mark up session on H.R. 4056 on April 29, 2004 and then, on the same date, the Subcommittee ordered that H.R. 4056 be favorably reported, without amendment, to the full committee. A full committee mark-up was held on May 12, 2004, where, after adopting a manager's amendment offered by Aviation Subcommittee Chairman Mica, (which made clarifying changes to the bill), H.R. 4056 was ordered reported, as amended, to the House by voice vote.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no rollcall votes during consideration of the bill.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objective of this legislation are to improve transportation safety.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4056 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 3, 2004.

Hon. DON YOUNG,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4056, the Commercial Aviation MANPADS Defense Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for this estimate are Megan Carroll and Sunita D'Monte.

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 4056—Commercial Aviation MANPADS Defense Act of 2004

CBO estimates that H.R. 4056 would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues. H.R. 4056 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

H.R. 4056 would encourage the Administration to take steps to protect commercial aircraft from the threat of portable, shoulder-launched missiles (commonly known as MANPADS). The Department of Homeland Security (DHS) is currently developing technologies to combat MANPADS. H.R. 4056 would require the Federal Aviation Administration (FAA) to support DHS's efforts by certifying the airworthiness of those technologies and preparing certain reports. According to the FAA, the agency already plans to do most of that work under current law. Hence, CBO estimates that any increased costs to the FAA under H.R. 4056 would be negligible.

The bill also would encourage the President to use diplomatic efforts, including treaties, to limit or destroy MANPADS. According to the Department of State, its Office of Weapons Removal and Abatement already has programs in place to destroy and limit the

availability of MANPADS. The bill would require an annual report to the Congress on the progress of these efforts, but CBO estimates the cost of the report would be negligible.

The CBO staff contacts for this estimate are Megan Carroll and Sunita D'Monte. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104-4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local or tribal law. The Committee states that H.R. 4056 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 4056 makes no changes in existing law.

